

MEMORANDUM

36146

THE WHITE HOUSE

WASHINGTON

January 2, 1972

ACTION

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MEMORANDUM FOR:

THE PRESIDENT

FROM:

HENRY A. KISSINGER

SUBJECT:

Fisheries Dispute with Ecuador, Peru and Chile

In the memorandum at Tab B, Under Secretary Irwin reports that our most recent proposals for a negotiated interim solution to the fisheries dispute with the West Coast South American countries were not acceptable to Ecuador. These proposals involved an arrangement for payment of license fees into an escrow fund, or a "running account" arrangement, with the disposition of the fees to be determined in light of the results of the 1973 Law-of-the-Sea Conference. Primarily because of domestic political instability, the Ecuadorean leaders were unwilling to agree to anything which could be construed as a deal with the U.S. Thus, the Ecuadoreans would not agree to:

- negotiate an escrow or running-account arrangement;  
assure us that they would refrain from seizures in return for a waiver of the FMS suspension;
- give us explicit assurances of support for our territorial seas and straits position.

At the same time, Ecuador continued to insist that we pay for necessary licenses and fees, if our tuna clippers fish within Ecuador's claimed 200-mile limit.

State and Commerce believe that the risks of a continuing cycle of boat seizures and sanctions, both to our hemispheric and law-of-the-sea interests, are so high that we should proceed unilaterally to seek legislation which would authorize reimbursement to fishermen who buy licenses under protest in advance. State and Commerce anticipate renewal of seizures after the yellow fin tuna season opens on January 1. They note that the seizures and sanctions will:

- cause economic losses to U.S. fishermen, carry the risks that some boats may be confiscated and American seamen imprisoned, and create political pressures in Congress to escalate retaliation against Ecuador;
- lead Ecuador to charge us with economic aggression in the OAS, and possibly take action against the \$300 million Texaco-Gulf oil invest-

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- further polarize the hemisphere nations against us on the law-of-the-sea issue and hamper our efforts to isolate the extreme 200-mile Latin American countries.

State and Commerce, therefore, recommend that the Executive Branch seek legislative authority to amend the Fishermen's Protective Act to provide for reimbursement of fees paid for licenses bought on or before January 1, 1972, because of the threat of seizure. Reimbursement would depend upon the fishermen filing a protest, and the Secretary of State would be required to make claims against the foreign government for the amounts expended by the U.S. The amount of funds would be taken into account by the Congress and the Executive Branch. The precise language of the proposed legislation is at Tab C. It is our understanding that U.S. tuna interests will go along with this arrangement. State and Commerce propose that we seek, but not absolutely require:

- Ecuadorean assurances of support for our territorial seas and straits position;
- that they would not seize U.S. tuna boats pending passage of the amendment.

In return, we would waive the FMS suspension and send a team immediately to discuss their military equipment needs.

The Department of Defense believes that the adoption of the amendment would be viewed by many countries as tantamount to recognition of exclusive coastal state jurisdiction over fisheries within a 200-mile zone. It, therefore, believes that we should seek such legislation only if we obtain adequate assurance of support by the CEP countries for our territorial seas and straits positions.

I believe that our prime objective should continue to be to achieve an interim solution to the fisheries problem which (a) avoids further seizures, and (b) protects our vital national security positions for the 1973 Law-of-the-Sea Conference. I agree with the State and Commerce position that a continuing cycle of seizures and sanctions can only polarize hemisphere attitudes and harden the Latins around the more extreme 200-mile position. Continued seizures could also become an increasing domestic political problem during the coming year, particularly if injuries are experienced by crew members or vessels of the San Diego-based tuna fleet are damaged.

I believe it may be possible for us to get assurances from Ecuador--which is the key problem country--on our territorial seas and straits position. The Ecuadorians have already indicated flexibility on the territorial seas issue. The straits issue is

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of no direct consequence for Ecuador, and hence they should be able to accommodate to our vital interests on this point.

I also believe that we should press very hard for assurance that there will be no seizures during the interim period pending passage of the new legislation. Although the Ecuadoreans refused to provide this kind of assurance previously, their Defense Minister indicated recently to our Ambassador that the military is very interested in receiving equipment under FMS. Our Ambassador believes that agreement might be reached if we offer the incentive of lifting the FMS suspension and responding quickly to their military requests. Although restraint from seizures during the interim period is not an absolute essential, it would undoubtedly enhance the chances for passage of the new legislation.

We have kept the Peruvian Government informed of our efforts to negotiate a solution with the Ecuadoreans, and the Peruvians have continued to exercise restraint while we try to work things out with Ecuador. It is not certain, however, that a new Peruvian Foreign Minister--who is scheduled to take over next month--will continue to maintain this constructive approach.

Attached at Tab A for your approval is a directive approving submission of the new legislation as recommended by State and Commerce, but conditioning it upon Ecuadorean support for our straits position. It also indicates a negotiating scenario which calls for the U.S. negotiators to make every effort to obtain assurances of Ecuadorean restraint pending passage of the legislation.

RECOMMENDATION:

That you approve the directive at Tab A. Bill Timmons concurs.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

Attachments:

- Tab A -- Directive for Presidential Approval
- Tab B -- Memo fm Under Secretary Irwin dtd 12/24/71
- Tab C -- Proposed Legislation

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